

IN THE COURT OF APPEALS OF IOWA

No. 0-635 / 10-0054
Filed November 10, 2010

YECIKA QUILES,
Plaintiff-Appellant,

vs.

LUCIO PEREZ MUNOZ,
Defendant-Appellee.

Appeal from the Iowa District Court for Woodbury County, Duane E.
Hoffmeyer, Judge.

Yecika Quiles appeals from the district court's ruling dismissing her
application to hold Lucio Perez Munoz in contempt. **AFFIRMED.**

Michelle Mackel-Wiederanders of Iowa Legal Aid, Des Moines, for
appellant.

Brien O'Brien, Sioux City, for appellee.

Amber L. Markham of Iowa Coalition Against Domestic Violence, Des
Moines, for amicus curiae.

Considered by Sackett, C.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.

On January 20, 2009, Yecika Quiles filed a petition for relief from domestic abuse. The named defendant was Quiles's husband, Lucio Perez Munoz (Perez). Quiles used the standard form required for petitions for relief from domestic abuse on which she checked the box requesting that court give her "temporary possession of the family car," a 1999 Pontiac Grand Prix. That same day, the district court entered, ex parte, a temporary protective order in favor of Quiles on the form approved by our supreme court to be used for such orders. On the form order, the judge checked a box next to a line that stated, "If checked, the protected party shall have the right to exclusive use and possession of the _____ vehicle until further order of the court" The district court filled in the blank with "1999 Pontiac Grand Prix."

Hearing on the temporary order was postponed twice. On March 24, 2009, before the hearing had taken place, Perez had the Grand Prix towed from the Curly's Foods parking lot where it had been left by Quiles or the person to whom she had loaned the car. Perez sold the vehicle the same day. He testified that he took the car because he knew somebody else was using it and he "didn't think it was fair like that."

A hearing took place on April 8, 2009, to determine whether a final protective order should be entered. The parties agreed to the entry of a protective order by consent, and neither party mentioned possession of the car. Following the hearing, the district court entered a protective order by consent agreement for a period of one year on the form approved by the supreme court

for that purpose. This form protective order by consent does not contain language regarding personal property, and the court did not refer to the Grand Prix in that order.

On August 17, 2009, Quiles filed an application for rule to show cause requesting that the district court find Perez in contempt of the temporary protective order for taking and selling the Grand Prix. At the hearing on October 28, 2009, Quiles asked the court to order Perez to provide her a car. Perez testified through an interpreter that he does not read English very well and that a police officer had explained the temporary order to him but did not explain to him that Quiles was ordered to have exclusive possession of the car. He had a friend with him during the officer's explanation, but he testified that neither he nor the friend understood the officer "too well." He admitted taking the car, but testified he did so because Quiles was driving a friend's truck and the Grand Prix was being used by someone else.

The district court dismissed Quiles's application on November 23, 2009, ruling that Iowa Code chapter 236 (2009) does not authorize a judge to make a property distribution in a domestic abuse proceeding and that the court therefore had been without authority to make any order for possession of the Grand Prix. Specifically, the court quoted Iowa Code section 236.5(4), which states, "An order or consent agreement under this section shall not affect title to real property."

Quiles filed a motion to reconsider, which the district court denied on December 11, 2009. In its ruling denying the motion to reconsider, the district

court stated, “A close reading of Iowa Code chapter 236 does not reveal any equitable authority to decide personal property divisions and disputes between the parties.”

Quiles now appeals, arguing: (1) chapter 236 provides the district court authority to award possession of a vehicle; (2) the district court’s dismissal of the contempt application for lack of authority to make the underlying order was an impermissible collateral attack; and (3) Perez was in willful violation of a valid court order and should be held in contempt. Iowa Coalition Against Domestic Violence supported Quiles’s position on her first issue regarding the scope of chapter 236 authority in an amicus curiae brief. Perez has not participated in the appeal.

Quiles asserts that the district court erred in determining it did not have authority to award possession of property in a domestic abuse temporary protective order and that she proved Perez willfully violated the temporary order of protection. We decline to address the first issue because, whether or not the district court had authority to award possession of the vehicle as a means to protect the plaintiff from domestic abuse, we disagree with Quiles’s second argument that the record supports a finding that Perez willfully violated a known provision of the court order.

“Proof of contempt in violating a court order^[1] requires a showing that there was a willful violation.” *In re Marriage of Spears*, 529 N.W.2d 299, 304

¹ Whether or not the court had authority to order possession of a vehicle as part of the temporary protective order, the court had subject matter jurisdiction to issue it, and failure to obey the order may be punished as contempt. See *Iowa Supreme Ct. Bd. of*

(Iowa Ct. App. 1994) (internal citations omitted). The party alleging contempt has the burden of establishing willfulness beyond a reasonable doubt.² *Ary v. Iowa Dist. Ct.*, 735 N.W.2d 621, 624 (Iowa 2007)

At the time Perez towed and sold the car, the temporary order granting Quiles exclusive use and possession of the car was in effect. Perez's actions in taking and selling the car constituted a violation of the temporary protective order. However, Perez testified that he did not understand that the order, written in English, gave exclusive possession of the car to Quiles. The circumstances surrounding Perez's taking of the car do not lend themselves to an inference that he understood he was violating a court order.

At the contempt hearing five months later, Quiles did not prove beyond a reasonable doubt that Perez violated the temporary order willfully, with an understanding that the court had entered an order prohibiting his possession of the Grand Prix. See *Id.* at 624 (stating a finding of willful disobedience requires evidence of conduct that is intentional and deliberate with a bad or evil purpose, wanton and in disregard of the rights of others, contrary to a known duty, or unauthorized, coupled with an unconcern whether the contemnor had the right or not).

Prof'l Ethics & Conduct v. Hughes, 557 N.W.2d 890, 892 (Iowa 1996) (noting that violation of an erroneous order may be punished by contempt).

² Ordinarily, when the district court declines to hold a party in contempt under a statute that allows the trial court some discretion, our review is for gross abuse of discretion. *In re Marriage of Swan*, 526 N.W.2d 320, 327 (Iowa 1995); see also Iowa Code § 664A.7(5) (allowing the district court discretion in finding a person in contempt for violating an order issued pursuant to chapter 236). However, in this case, the district court did not reach the factual issue and so did not exercise its discretion in declining to hold Perez in contempt. We review the record for evidence beyond a reasonable doubt that Perez willfully violated the temporary protective order.

We affirm the dismissal of the application for contempt.

AFFIRMED.

Tabor, J., dissents.

TABOR, J, (dissenting)

I respectfully dissent. I believe the district court erred in deciding that the temporary protective order could not be enforced because Iowa Code chapter 236 provides no express authority for awarding possession of a family car to the party protected by the order. I would reverse the dismissal and remand for further proceedings.

The district court dismissed the contempt application because it concluded the court issuing the temporary protective order lacked statutory authority to grant possession of a vehicle to the protected party. Quiles moved to reconsider the dismissal, noting that the temporary protective order forms—which contain a provision for assigning possession of a motor vehicle—were approved by the Iowa Supreme Court. See Iowa Ct. R. Form 4.1. In ruling on Quiles’s motion to reconsider, the district court stated:

While sympathetic to the plight of the plaintiff, the court still concludes there is no statutory authority under Iowa Code chapter 236 for the division of personal property of the parties, including, but not limited to an award of a motor vehicle. The court makes this conclusion despite language contained in the approved temporary order.

The court also provided: “Had the plaintiff had a no contact order in a dissolution proceeding (which is permitted), there is no doubt Mr. Munoz could be held in contempt of court.”

The district court dismissed the contempt action on an erroneous legal basis. I would find that the district court issuing the temporary order had authority to grant possession of the family car to Quiles as a means to protect her from domestic abuse. An award of temporary possession of a vehicle may allow

a domestic violence victim to maintain a greater level of security and autonomy. Iowa courts are authorized to include individualized remedies to ensure the safety of a party protected by a court order. See Iowa Code § 236.5(2) (2009) (including catch-all phrase “not limited to”). Our supreme court recognized this authority in approving the form orders which contemplate that a temporary award of a vehicle would be appropriate in certain cases. Iowa Ct. R. Form 4.1; *cf. Hindman v. Reaser*, 246 Iowa 1375, 1378, 72 N.W.2d 559, 561 (1955) (holding rules of civil procedure have force and effect of statute).

But even if the temporary order were erroneous in its scope, the court had subject matter jurisdiction to issue it and failure to obey the order may be punished as contempt. See *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Hughes*, 557 N.W.2d 890, 892 (Iowa 1996) (noting that violation of an erroneous order may be punished by contempt).

The district court did not reach the question whether the record contained sufficient evidence to prove beyond a reasonable doubt that Perez willfully disobeyed the court order granting Quiles possession of the 1999 Pontiac Grand Prix. Selected language in the court's reconsideration order quoted above suggests that the district court may have found Quiles proved her husband's contumacious conduct, had it tackled that question. But the better practice would be not to guess how the district court would evaluate the evidence and the credibility of the witnesses. See generally *Ramirez v. Iowa Dep't of Transp.*, 546 N.W.2d 629, 634 (Iowa Ct. App. 1996) (“We have often recognized that the district court is [in] a better position than we to assess the credibility of

witnesses.”). The better practice would be to remand this matter to allow the district court to determine for the first time whether proper proof supported a contempt finding. See, e.g., *Huyser v. Iowa Dist. Ct.*, 499 N.W.2d 1, 3 (Iowa 1993) (remanding for district court to determine whether father’s nonpayment of child support was willful); *In re Marriage of Leyda*, 398 N.W.2d 815, 820 (Iowa 1987) (reinstating contempt citation and remanding for further proceedings); *Phillips v. Iowa Dist. Ct.*, 380 N.W.2d 706, 710 (Iowa 1986) (remanding for district court to determine whether proof beyond a reasonable doubt existed for contempt finding); *In re Marriage of Lenger*, 336 N.W.2d 191, 193 (Iowa 1983) (reversing district court’s dismissal of contempt action as unconstitutional and remanding for further proceedings).

Because I believe that the district court erred in concluding the temporary order could not be enforced and that the district court should have the first opportunity to determine the sufficiency of the evidence supporting the contempt allegation, I would reverse and remand this case for further proceedings.